

Round One: State Confidential Facts

You believe you have a strong case against Gritter and can prove that Gritter was a mere continuation of McCabe or that this was a de facto merger. You believe that Drabbino has a valid defense to liability because he would be considered a “bona fide prospective purchaser “ under the new statute. You are prepared to vigorously argue this, (although you would certainly preserve your right to pursue Drabbino if that proved necessary). It seems clear to you that Congress intended to change the law to provide liability protection for purchasers of contaminated property. As a regulator, you don’t want to appear to be eager to eviscerate the intended protections. At the same time, you know that regulators have been criticized for pursuing only the deep pockets at Superfund sites.

Your preference would be to get a substantial settlement from Gritter for costs and cleanup and leave the pursuit of Drabbino to Gritter. If absolutely necessary, you would reluctantly agree to pursue Drabbino independently, but for a smaller share of the costs - perhaps 20% of total site costs. Also, if absolutely necessary, you would be willing place some of the recovered past costs into a special account. Those funds could be utilized to fund future site work if necessary. If there are funds remaining in the special account that are not needed for site work, the money will go back into the state treasury.

In this round of negotiations, you want to resolve how much Gritter will agree to pay in reimbursement of the State’s past costs, and how much of the cleanup Gritter will implement or fund. If all the other pieces of the settlement fall into place, the State may be willing to issue a press release in which it acknowledges Gritter’s contribution to cleaning up the site. It will not, however, negotiate over the content of such a press release.